

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LENDAL R. SMITH III,

Plaintiff,

v.

Civil No. 02-0446 WJ/KBM

THOMAS E. WHITE, Secretary
of the Army, Agency,

Defendant.

MEMORANDUM OPINION AND ORDER


THIS MATTER comes before the Court upon Plaintiff's Motion for Default Judgment, filed December 18, 2002 (**Doc. 12**). Plaintiff was twice allowed the opportunity to effect service on Defendant. On November 25, 2002, Magistrate Judge Smith quashed the second order to show cause, noting that Plaintiff had filed two Returns of Service which declared that Plaintiff effected service upon the Defendant. Doc. 11. However, my review of the actual Returns of Services indicates that Defendant still has not been properly served.

The party against whom default is entered must have been properly served with process. Pursuant to Fed. R. Civ. P. 4(e), service is permitted by serving that individual in accordance with the law of the State of New Mexico (Rule 4(e)(1)); or by delivering process personally, by delivering process to the individual's dwelling or usual place of abode, or by delivering a copy of the summons and complaint to an appointed agent.

Plaintiff served both Thomas E. White and the White Sands Missile Range by certified

mail / return receipt. Certified mail is not one of the ways envisioned under Rule 4. Therefore, Plaintiff's Motion for Default is DENIED. Because Plaintiff has now had two chances to properly serve Defendant, and twice has not complied with Rule 4's provisions, the Court is contemplating dismissal of this case for failure to prosecute under Fed.R.Civ.P. 41(b). See Slack v. McDaniel, 529 U.S. 473 (2000) (court may grant motion for involuntary dismissal or dismiss an action *sua sponte*). Therefore, unless Plaintiff effectuates service properly upon Defendant within **thirty days (30 days)** from the date on which this Memorandum Opinion and Order is entered, it is the Court's intention to dismiss this case for failure to prosecute.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE